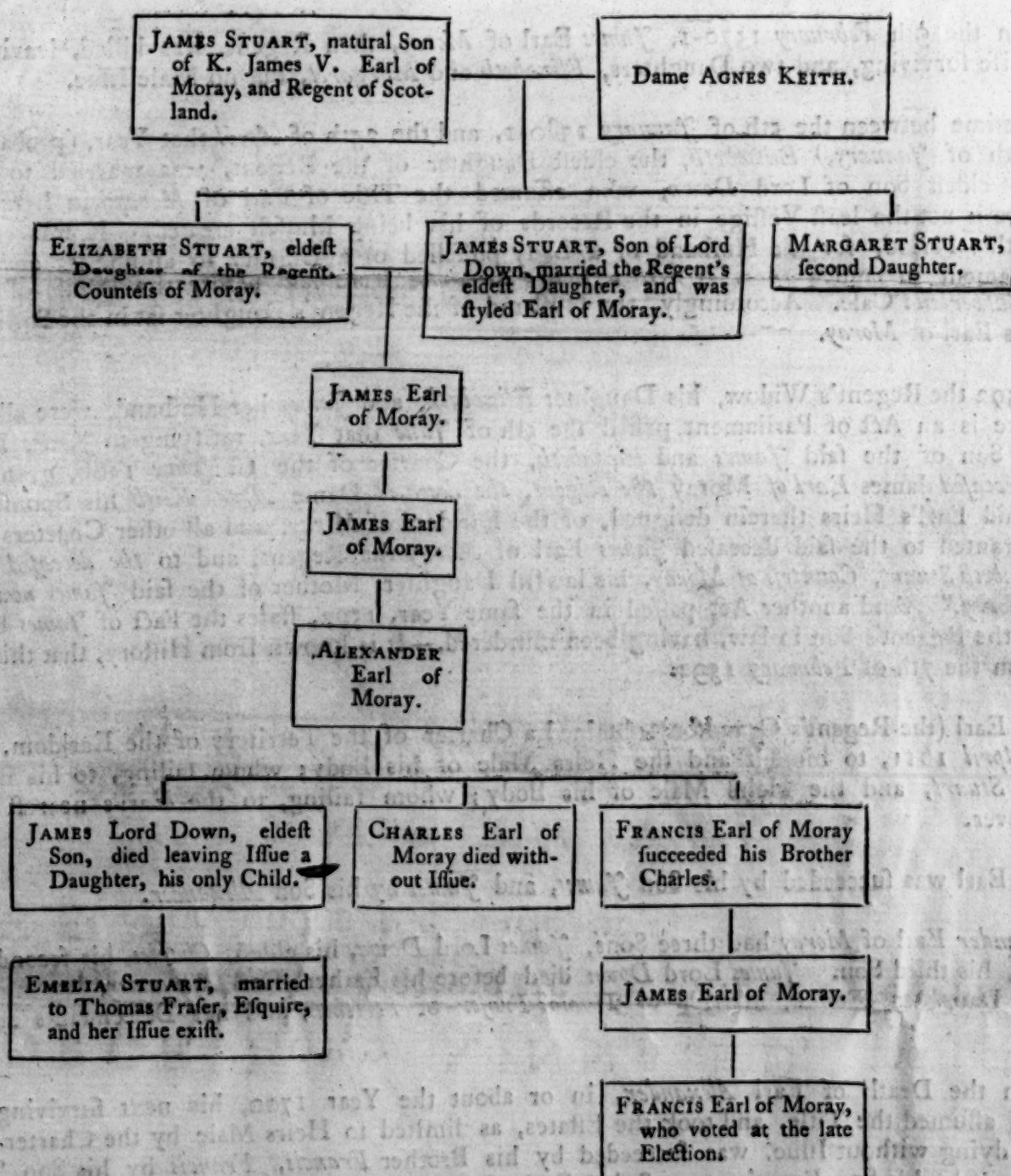


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C A S E  
O F  
GEORGE LORD KINNAIRD, and other  
Peers of *Scotland*, objecting to the Votes given at the  
late Election under the Title of  
M O R A Y.

P E D I G R E E:



**T**HAT this Dignity was vested in *James Stuart*, natural Son of King *James V.* cannot admit of Dispute. There are upon Record many Royal Grants and Charters in his Favour by that Title: He sat in Parliament as Earl of *Moray*: There are sundry Acts of Parliament in which he is so styled; and, finally, he was the Regent elected on the Abdication of Queen *Mary*, during the Infancy of *James VI.* and so well known in *English* and *Scots* History by the Title of Earl of *Moray*, or *Murray*.



Yet no Grant of the Dignity to him appears, consequently the Limitation of the Honour must be gathered from Circumstances, or the History of the Family.

Queen Mary, by Charter dated 31st January 1561-2, granted to James Stuart her natural Brother, the Territory called the Earldom of Murray and Lordships of Abernethy and Stratherne, to be held by him, and the Heirs Male of his Body; whom failing, to return to the Crown.

On the 7th of February 1561-2, the Queen granted to him the Territory called the Earldom of Marr; and by the same Charter created him Earl of Marr, to hold to him and the Heirs Male of his Body; whom failing, to return to the Crown. Accordingly, on the 12th of that Month, he appears in the List of Privy Counsellors, *Jacobus Comes de Marr*.

In the same Year, 1562, this Grant of the Earldom of Marr appears to have been challenged by Lord Erskine, the Heir of the ancient Earls, and set aside.

After that Time James Stuart was called Earl of Moray. It is submitted, this must have been by Creation, upon his losing the former Title.

By the Title of Earl of Moray he resigned the Territory of the Earldom into the Queen's Hands, and obtained a new Charter thereof, of 22d January 1563, limited to the said James Earl of Moray, and the Heirs Male of his Body; whom failing, to return to the Crown.

The Earl again resigned the Earldom in the Queen's Hands, and obtained a new Charter, 1st June 1566, limited "to the said James Earl of Moray, and Lady Agnes Keith his Wife, and the Survivor of them, in conjunct Fee, and to the Heirs lawfully procreated, or to be procreated, between them; whom failing, to the nearest lawful Heirs whatsoever of the said Earl."

Upon the 9th February 1570-1, James Earl of Moray, then Regent, was killed, leaving his said Wife surviving, and two Daughters, Elizabeth and Margaret, but no Male Issue.

Sometime between the 5th of January 1580-1, and the 25th of April that Year, (probably on the 29th of January,) Elizabeth, the eldest Daughter of the Regent, was married to James Stuart, eldest Son of Lord Down, who assumed the Title of Earl of Moray in her Right, for there is not the least Vestige in the Records of his being himself created. It was customary at this Period, for the Husband of a Lady possessed of a Dignity to assume it, and to sit in Parliament in consequence, of which many Instances were laid before the House of Lords in the Sutherland Case. Accordingly, the Husband of the Regent's Daughter sat in the Parliament 1584 as Earl of Moray.

In 1592 the Regent's Widow, his Daughter Elizabeth, and James her Husband, were all dead; for there is an Act of Parliament passed the 5th of June that Year, ratifying to James Earl of Moray, Son of the said James and Elizabeth, the Charter of the 1st June 1566, granted to "the deceased James Earl of Moray the Regent, the deceased Dame Agnes Keith his Spouse, and the said Earl's Heirs therein designed, of the Earldom of Moray, and all other Charters given or granted to the said deceased James Earl of Moray the Regent, and to the deceased Dame Elizabeth Stuart, Countess of Moray, his lawful Daughter, Mother of the said James now Earl of Moray." And another Act passed in the same Year, 1592, states the Fact of James Earl of Moray, the Regent's Son-in-law, having been murdered.—It is known from History, that this happened on the 7th of February 1592.

This Earl (the Regent's Grandson) obtained a Charter of the Territory of the Earldom, dated 17th April 1611, to himself and the Heirs Male of his Body; whom failing, to his Brother Francis Stuart, and the Heirs Male of his Body; whom failing, to the Earl's nearest Heirs whatsoever.

This Earl was succeeded by his Son James, and James by his Son Alexander.

Alexander Earl of Moray had three Sons, James Lord Down, his eldest, Charles, his second, and Francis, his third Son. James Lord Down died before his Father, Earl Alexander, leaving Issue an only Daughter, Emilia, married to Thomas Frazer of Strichen, and her Descendants are existing.

Upon the Death of Earl Alexander, in or about the Year 1700, his next surviving Son, Charles, assumed the Title, and took the Estates, as limited to Heirs Male by the Charter 1611. Charles dying without Issue, was succeeded by his Brother Francis, Francis by his Son James, and James by his Son Francis, now styled Earl of Moray; but the Right of these last-mentioned Persons has always been doubted, and an Idea entertained, that the Peerage is in the lineal Descendant of James Lord Down.

The Objectors to the Votes given by Lord Moray are to maintain that Proposition; and it would be made out by shewing, that the Title passed from the Regent Moray to his Daughter Elizabeth; and that her Husband had it only in her Right.



The Limitation of the Dignity, when vested in the Regent, not appearing, it must be presumed that it was either to the Heirs Male, or to the Heirs *whatsoever*, of his Body. He had no Son, and the present Earl is *not* his Heir *whatsoever*.

Lord *Moray* must therefore claim under some supposed posterior Creation; and it is understood, that he means to contend, that *James Stuart*, who married the Regent's Daughter, and who was afterwards styled Earl, was such in his own Right, and not merely in Right of his Wife. In Aid of this it will be said, that it appears from different Proceedings upon Record, that the Regent's Daughter was not styled Countess after the Death of her Father, but simply *Elizabeth Stuart*, till after her Marriage with *James Stuart*.

But according to the Ideas and Practice of that Age, as shewn in the Countess of *Sutherland's* Case, a Person entitled to a Dignity never assumed it till infeoffed, or formally vested in the dignified Fief; and as the Fief of the *Earldom of Murray* then stood vested in the Regent's Widow by the Charter 1566, the Daughter could not make a Title to it, and therefore was not called the Countess. But it appears, that upon her Marriage with *James Stuart* in 1581, the Countess Dowager had restricted her Right to a Liferent, and conveyed the Fee to her Daughter, who was immediately styled Countess of *Moray*; and this accounts for her Husband's being called Earl subsequent to his Marriage; and being once vested in him, it continued during his Life, by the Courtesy and Fashion of those Times.

From this it follows, that the Dignity of Earl of *Moray*, by the original Creation, must have been descendible to Females, and consequently that it is now in the Representative of the Daughter of *James Lord Down*. Why her Family suffered *Charles*, styled Earl of *Moray*, her Uncle, to assume the Dignity as a Male Fee, is accounted for, by the Estate which once belonged to the Regent passing to Males in Exclusion of Females, by virtue of the Charter 1611.

An Instrument appears upon Record which supports the Proposition, that the Dignity was a Female Fee, and vested in *Elizabeth Stuart*, the Regent's eldest Daughter, viz. a Precept under the Privy Seal for a Charter of Confirmation of a Grant made by *Elizabeth Countess of Moray* (the Regent's Daughter), and *James Earl of Moray*, her Husband, of certain Lands within the Earldom of *Moray*, to *Walter Mawer*, to be holden of the said Countess, and the Earl her Husband, *et de eorum hæredibus Comitibus et Comitissis de Moray*.—Here the Grantors plainly suppose that the Dignity may be enjoyed by Females.—This Instrument bears Date the 14th of June 1594.

Under all the Circumstances, it is submitted to be incumbent on the Earl of *Moray* to shew by what Authority he takes the Title, being neither the Heir Male nor Heir of Line of the Person originally ennobled.

JOHN SCOTT.  
T. ERSKINE.  
SYLV<sup>R</sup>. DOUGLAS.  
W. GRANT.







